

# Implementation of the Community legal framework for a European Research Infrastructure Consortium (ERIC)



# ERIC : Main aims

An easy-to-use legal instrument providing:

- the spirit of a truly European venture
- a legal personality recognized in all MS
- flexibility to adapt to the specific requirements of each infrastructure
- some privileges / exemptions allowed at a national level for intergovernmental organisations
- a faster process than creating an international organisation

## ***Article 187 TFEU (ex-171 EC Treaty)***

The Community may set up joint undertakings or any other structure necessary for the efficient execution of Community research, technological development and demonstration programmes.

# ERIC's Tasks & requirements

- Principal task: **establish and operate a Research Infrastructure**, on a **non economic basis** (limited economic activities are however possible)
- Five requirements to be met:
  - necessary for **European research**
  - **added value** in the development of ERA and significant **improvement** in relevant S&T fields
  - **effective access** to European researchers
  - Contributes to the **mobility of knowledge** and/or **researchers** with in the ERA
  - **dissemination / optimization** of the RTD results

# Membership of an ERIC

- Member States
- Associated Countries
- Third States
- Intergovernmental organisations

An ERIC must at all times have at least **three** Member States as members.

**Member States shall jointly hold the majority** of the voting rights in the assembly of members.

A State may be **represented** by one or more public entities or private entities with a public-service mission

# Public Procurement and VAT

ERICs will not be bound by the procedures of the **Public Procurement Directive** but may set their own procurement rules based on transparency, non-discrimination and competition.

ERICs will be exempted from paying **VAT** and **excise duty**.

This is possible because ERICs will be considered as international bodies/ organisations for the purposes of the Directives on public procurement, VAT and excise duties.

# Internal Structure of an ERIC

- **statutory seat** in a Member State or Associated Country; research locations anywhere
- mandatory **bodies** (members' assembly; director/board of directors)
- members' **liability**
  - ✓ limited to committed contribution, no capital requirement.
  - ✓ may specify in the Statutes a fixed liability above their respective contributions or unlimited liability.

# Law applicable to the internal functioning of an ERIC

- **Community law**, in particular the ERIC Regulation
- the law of the State where the ERIC has its **statutory seat**
- **The ERIC's statutes**, adopted in conformity with the sources of law referred to above, and its **implementing rules**



# Status of the ERIC legal framework

- Adoption of proposal by Commission, 25 July 2008
- Adoption by Council, 25 June 2009
- Entry into force, 28 August 2009
- Meetings of ERIC Committee 9 October 2009, 25 January 2010
- ERIC Practical Guide available to projects since 27 November 2009
- Several RI projects preparing applications
- Update of Practical Guidelines online

# Application process

1. Governments and int. Org. which want to be members of a future ERIC finalise
  - technical description of the RI
  - recognition of tax exemption as int.org/body by host
  - agreement on limits and conditions of tax exemptions
  - statutes
  - If members outside EU: recognition of legal personality and tax exemptions in the countries which want to be member of the ERIC
2. **Host state submits the request on behalf of committed members via its permanent representation**

# Application process

3. DG RTD verifies completeness of application
4. If application complete,
  - selects 4-5 independent experts to verify whether the Research Infrastructure complies with art. 4 of the Regulation (scientific relevance, effective access, etc.)
  - Examines compliance with the administrative requirements (min. 3 Member States, statutes contain all necessary elements, etc.)

# Application process

## 5. Applicants are informed of outcome of the assessment

If assessment shows a need for modifications to ensure compliance with the ERIC Regulation they may

- Modify their application.
- withdraw their application
- insist on receiving a formal decision on their original application

**6. Documents eventually revised following assessment are signed by all members and submitted to the Commission in paper form.**

# Application process

7. DG RTD will prepare a formal Commission Decision to set up or to reject the application
8. The resulting suggested Commission decision will be put to the ERIC Committee for opinion (members: delegates nominated by all EU Member States; Associated Countries can send observers)
9. Formal Commission Decision setting up /rejecting the ERIC
10. If setting-up: publication in OJ

- Further information:

[http://ec.europa.eu/research/infrastructures/eric\\_en.html](http://ec.europa.eu/research/infrastructures/eric_en.html)

Many thanks for your attention -

Questions welcome!